

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

NATIONAL HOME INSURANCE	)	
COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	No. 07-0848-CV-W-FJG
ROBERT L. BERGER and MARY BERGER,	)	
	)	
Defendants.	)	

**ORDER**

On November 10, 2007, plaintiff filed the present action and a motion seeking to compel arbitration and to stay a state court proceeding, Berger, et al. v. Comer Dev. Corp., et al., Circuit Court of Johnson County, Missouri, Case No. 17V040500158. Defendants agreed to a stay of the state action and to submit their claims to arbitration. In the state court, the parties filed a stipulation to stay the state action and to have Mr. and Mrs. Berger submit their claims to arbitration. On February 6, 2008, the state court ordered that the state case would be stayed and that the Bergers must submit their claims to arbitration. On February 25, 2008, unaware of the state court's order, this Court granted plaintiff's motion to compel arbitration and stay the state court action; the same relief that had already been granted by the state court.

"Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies. It is of no consequence that the controversy was live at earlier stages in this case; it must be live when we decide the issues." Lupiani v. Wal-Mart Stores, Inc., 435 F.3d 842, 847 (8th Cir. 2006) (internal quotations and citations omitted).

Further, the issue of mootness may be raised either by the parties or by the Court *sua sponte* at any point in the litigation because it relates to the Article III case or controversy requirement. Gay and Lesbian Students Ass'n v. Gohn, 850 F.2d 361, 365 n. 9 (8th Cir. 1988).

Plaintiff's prayer for relief requests that the Court grant a stay of the state proceedings and compel arbitration, and does not request any other relief. Before the Court acted on plaintiff's motion, the state court awarded plaintiff the relief it sought. Therefore, the case was moot at the time the Court entered its order granting plaintiff's motion to compel, and the case remains moot at present since no issues remain for the Court to decide.

Accordingly, the Court **VACATES** its February 25, 2008 Order (Doc. No. 6) and **DISMISSES** this case **WITHOUT PREJUDICE**.

**IT IS FURTHER ORDERED** that the Clerk of the Court send a copy of this order via first class mail and certified mail, return-receipt to: Mr. And Mrs. Robert Berger, 137 S.E. 61<sup>st</sup> Road, Warrensburg, MO 64093-7357.

**IT IS SO ORDERED.**

Date: 4/14/09  
Kansas City, Missouri

**S/ FERNANDO J. GAITAN, JR.**  
Fernando J. Gaitan, Jr.  
Chief United States District Judge